

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

BOISE CITY, a Municipal Corporation of
the State of Idaho,

Appellant,

vs.

ROBERT B. WILSON, EVELINE
O'FARRELL, TERESA O'FARRELL,
ANGELINE O'FARRELL, and R. E.
EMERSON,

Appellees.

TRANSCRIPT OF RECORD.

Appeal from the Circuit Court of the United States
for the Central Division of the
District of Idaho.

FILED

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*In the Circuit Court of the United States, Ninth Judicial
Circuit, District of Idaho, Central Division.*

ROBERT B. WILSON, JOHN A.
O'FARRELL, and R. E. EMMER-
SON,

Plaintiffs,

vs.

BOISE CITY, a Municipal Corporation
of the State of Idaho,

Defendant.

Bill of Complaint.

To the Judges of the Circuit Court of the United States,
District of Idaho, Central Division:

The plaintiffs herein, Robert B. Wilson, John A. O'Farrell, and R. E. Emmerson, present this their bill of complaint against Boise City, a municipal corporation of the State of Idaho, a corporation organized and existing under and by virtue of the provisions of an act of the legislative assembly of the territory of Idaho, approved January 11, 1866, entitled "An act to incorporate Boise City, in Ada County," and of the several acts amendatory thereof and supplementary thereto. And thereupon your orator complains and says:

I.

That said Boise City is a municipal corporation, organized and existing under and by virtue of the provisions

of an act of the legislative assembly of the territory of Idaho, approved January 11, 1866, entitled "An act to incorporate Boise City, in Ada County," and of the several acts amendatory thereof and supplementary thereto.

II.

That the complainants are now, and for a long time hitherto have been in severalty, the owners of in fee and in the possession of those certain lots, pieces, or parcels of land situate, lying, and being in the county of Ada, State of Idaho, and hereinafter particularly described.

III.

That by the provisions of the act of the legislature of the State of Idaho approved March 12, 1897, and entitled "An act to amend sections three, five, and eleven of the act incorporating the city of Boise, approved January 11, 1866, being sections 130, 132, and 138 of special and local laws of Idaho, and under subdivision 27 of section 2 of said act, it is provided that the mayor and common council shall have full power and authority within Boise City, as follows: Twenty-seventh.—To divide the city into convenient sewer districts, and upon a petition of a majority of the resident property owners of any such district to provide for the construction of, and to construct sewers within such district; the expense thereof to be defrayed by special assessments upon the property contiguous to, or abutting or fronting upon the street, alley, avenue, or lane through or along, or on the line of which the sewer may run. Such special assessment to be ap-

portioned, levied, and collected in the same manner as provided in subdivision 26 of this section.

IV.

That on the 28th day of March, 1898, at a meeting of the common council of the said Boise City, the following ordinance was passed by said common council and approved by the mayor on the 29th day of March, 1898, to wit:

Ordinance No. 249.—An ordinance relating to the construction of a sewer in sewer district number two, which embraces all that part of Boise City lying between Hays and Franklin streets of said city, commencing at the sewer main, situate in Thirteenth street, running thence easterly to the east boundary line of said city, in Boise City, Idaho.

Be it ordained by the mayor and common council of Boise City, Idaho:

Section 1. A sewer is hereby ordered to be laid and constructed in the alleys of sewer district number, which embraces all that part of Boise City lying between Hays and Franklin streets, commencing at the sewer main, situate on Thirteenth street, running thence easterly to the east boundary line of said city, in Boise City, Idaho.

Sec. 2. Said sewer is to be laid and constructed in accordance with the ordinances of Boise City relative to the same, and under the supervision of the city engineer, and satisfactory to the common council of Boise City, Idaho.

Sec. 3. The cost and expense of laying and construct-

ing the sewer ordered to be laid and constructed by sec. 1 of this ordinance shall be defrayed by a special assessment to be levied upon and against all property fronting on or abutting upon said alleys situate and lying between Hays and Franklin streets, commencing at the sewer main on Thirteenth street of said city, running thence easterly to the east boundary line of said city.

And the extra expense of laying and constructing said sewer under cross streets, constructing manholes, flushing tanks, foot-vents and making connections with the water supply for flushing, shall be borne and paid by all the property owners in that part of said sewer district referred to in section one of this ordinance, each property owner paying such proportionate part of the whole of said extra expense, as his frontage on said alley bears to all the property referred to in said section one, which said assessment shall be a lien upon said property until the same is fully paid, from the date of the levy thereof.

Sec. 4. This ordinance shall be enforced and take effect from and after its passage by the council and approved by the mayor.

Passed the common council this 28th day of March, 1898.

Approved this 29th day of March, 1898.

M. ALEXANDER,

Mayor.

Attest: P. H. BLAKE,

Clerk.

V.

That on the same date and at the same meeting of the common council of the said Boise City the following ordinance was also passed, to wit:

Ordinance No. 250.—An ordinance relating to the construction of a sewer in sewer district number three, which embraces all that part of Boise City lying between Franklin and Washington streets, commencing at the sewer main situate on Thirteenth street in said city, running thence easterly to the east boundary line of said city, in Boise City, Idaho.

Be it ordained by the mayor and common council of Boise City, Idaho:

Section 1. A sewer is hereby ordered to be laid and constructed in the alleys of sewer district number three, which embraces all that part of Boise City lying between Franklin and Washington streets of said city, commencing at the sewer main on Thirteenth street, running thence easterly to the east boundary line of said city, in Boise City, Idaho.

Sec. 2. Said sewer to be laid and constructed in accordance with the ordinances of Boise City, relative to the same, and under the supervision of the city engineer, and satisfactory to the common council of Boise City, Idaho.

Sec. 3. That cost and expense of laying and constructing the sewer ordered to be laid and constructed by section one of this ordinance shall be defrayed by a special assessment to be levied upon and against all property fronting or abutting upon said alleys situate and lying

between Franklin and Washington streets, commencing at the sewer main on Thirteenth street of said city, running thence easterly to the east boundary line of said Boise City. And the extra expense of laying and constructing said sewer under cross streets, constructing manholes, flushing tanks, foot-vents, and making connections for water supply for flushing, shall be borne and paid by all the property owners in that part of said district referred to in said section one of this ordinance each property owner paying such proportionate part of the whole of said extra expense, as his frontage on said alley bears to all the property referred to in said section one, which said assessment shall be a lien upon said property until the same is fully paid, from the date of the levy thereof.

Sec. 4. This ordinance shall be enforced and take effect from and after its passage by the council and approved by the mayor.

Passed by the common council this 28th day of March, 1898.

Approved this 29th day of March, 1898.

M. ALEXANDER,
Mayor.

Attest: P. H. BLAKE,
Clerk.

VI.

That after such proceedings were had, then a contract was let in accordance with the terms of the above ordinance, and the work of constructing the said sewers re-

spectively was commenced and completed thereunder in the above-named districts as provided for in the said ordinances.

VII.

That on the 4th day of November, 1898, at a meeting of the common council of Boise City, an ordinance was passed by the said common council and approved by the mayor.

Said ordinance being entitled number 266: An ordinance providing for the levying of assessment to pay the costs and expenses for laying and constructing sewers in sewer district number two embracing all that part of Boise City lying between Hays and Franklin streets, commencing at the sewer main, situate on Thirteenth street and extending to the east boundary line of said Boise City; also in sewer district number three, embracing all that part of Boise City lying between Franklin and Washington commencing at the sewer main, situate on Thirteenth street, and extending to the east boundary line of the said Boise City, Idaho.

That the said ordinance so passed and approved by the mayor provided:

Section 1. That for the purpose of defraying the cost of laying and constructing sewers in sewer district numbers two and three, as provided in ordinances 249 and 250, and in accordance with other ordinances of Boise City, relative to the laying and constructing of sewers from the sewer main, situate on Thirteenth street and extending to the east boundary line of said city line between Hays and Franklin streets in said city; also

from the sewer main, situate on Thirteenth street, and extending to the east boundary line of said city line between Franklin and Washington streets in Boise City, Idaho.

And thereupon by said ordinance it was provided that there should be levied and there was levied by the said city council upon and against all property fronting or abutting upon, or contiguous to that portion of sewer districts numbers two and three above described, including intersections of streets, constructing manholes, flushing tanks, foot-vents, making connections for water supplies for flushing and defraying the city expenses of the city engineer in giving grades, etc., a local or special assessment of 62.82 cents per linear foot for each linear foot of property represented in said districts.

The respective amounts of said assessment chargeable against each lot, piece, or parcel of said property owned by these complainants being as follows, to wit, according to the official plat of Boise City, Idaho:

Lots 1 to 11, inclusive, block 104.....	\$421.08
Lots 1, 2, 7 and 8, block 96.....	145.80
Lots 5, 6, 10, 11 and 12, block 97.....	182.07
Lots 1 to 12, inclusive, block 99.....	435.51
Lots 1, 2, 3, 4, and north fraction of block 128	276.23
Lots 11 and 12, block 100.....	73.43

The said ordinance provided further that the assessments levied by the same should be due and payable by the owners of said property to the city tax collector on the first day of December, 1898, and if not paid before said date the same should be and become delinquent.

The same ordinance contained the following provisions that a penalty of 15 per cent on all delinquent assessments must be added for delinquency, and must be collected when delinquent assessments are collected, together with costs of collections.

That within ten days after the said first day of December, 1898, the city tax collector should make a list of all property on which said assessments are delinquent, showing the particular tracts and the names of the owners or reputed owners; and shall immediately cause said list to be published for ten days within Boise City. At the expiration of such publication all property on which said assessments are not then paid shall be sold by the city tax collector at the city hall to satisfy said assessments and penalty and costs.

That notice of said sale shall be given and be published for and during the time the delinquent list is published and in connection therewith. Such sales shall be conducted in the same manner and have the same effect as sales of property for delinquent taxes; and the ordinances of Boise City relative to sales for delinquent property so far as they may be applicable shall govern the issuance of certificates of sales. That there should be established in the city treasury a fund to be known as the second and third district sewer fund.

That all moneys collected on account of the assessments by this ordinance levied shall be paid into the city treasury to the credit of said fund, and shall be paid only on warrants drawn against said funds. Such warrants shall draw interest at the date of issuance at the

rate of eight per cent per annum until called for payment; and the said assessments were by the same ordinance declared to be a lien against the property upon and against which they are levied, from the passage and approval of this ordinance until said assessments are wholly paid and satisfied.

VIII.

That neither by said ordinance nor by the act above referred to as amendatory of the city charter, nor by any other act of either the legislature or of the city council of Boise City, is there any provision whatever, nor any means pointed out by which the assessment can be made against the lots and blocks herein mentioned according to the benefits conferred on each distinctive lot or parcel of property as therein described and set forth.

And said assessment levied by virtue of said ordinance 266 levies and assesses each lot or parcel of ground abutting upon said sewer with the full amount of the cost of the sewerage, expenses of engineer, and other costs and expenses; that the said assessment is wholly arbitrary and has no reference whatever either to the value of the lots upon which the assessment is made, the benefits conferred upon said lots, nor the damages, if any, resulting from the building of said sewer.

IX.

That heretofore, to wit, in the year 1895, sewers were built and constructed by said city from Thirteenth street to the east line of said city along the alleys of each block respectively, running east and west between Washington

street and Front street, and the whole cost of said sewerage is assessed upon the whole city of Boise City, and the bonds of said Boise City issued therefor.

That the plaintiffs in this cause are obliged to pay their proportionate share of the taxes of said city for the construction of last mentioned sewerage, and the whole of the cost of the sewerage in sewer districts numbers 2 and 3, as provided for in the ordinances numbers 249 and 250, above set forth.

X.

That Mrs. Carrie E. Myers is the duly elected, qualified, and acting tax collector of said Boise City, Idaho; that in accordance with and under and by virtue of said ordinance number 266, as above set forth, the said Carrie E. Myers, as such city tax collector of Boise City, Idaho, did cause to be advertised for sale at the city hall, in Boise City, on June 20, 1899, the above-described real estate for the delinquent tax and the costs as above set forth; which said tax and assessments were levied against said property for the purpose of constructing the sewers above described and set forth as having been constructed between Hays street on the north and Washington street on the south.

XI.

That said sale did take place as advertised on June 20th, 1899, and the tax collector of said Boise City, did sell at such sale the several pieces, parcels, and tracts of land belonging to these plaintiffs and thereinbefore described to pay said assessment so as aforesaid levied for

the purpose of constructing said sewer; and that at said sale the said Boise City, defendant herein, did purchase each of said pieces, parcels, or tracts of land hereinbefore described. That the complainants are the owners in severalty and in fee of the above-described tracts of land which were sold for said assessment to said Boise City, respectively, as follows, to wit:

That Robert B. Wilson is the owner of lots 1 to 11, inclusive, in block 104, Boise City, Idaho.

That R. E. Emmerson is the owner of lots 1, 2, 7 and 8 in block 96, Boise City, Idaho.

That John O'Farrell is the owner of lots 5, 6, 10, 11 and 12 in block 97; of lots 1 to 12, inclusive, in block 99; of lots 11 and 12 in block 100, and the whole of the fractional block numbered 138 containing about one acre of ground all in Boise City, Idaho. That the whole of said lots, blocks, and parcels of land are situate in the said city of Boise, in the county of Ada and in the State of Idaho, and all within said sewer district hereinbefore set forth and described in said ordinances of Boise City, herein referred to.

XII.

That the property of each of the complainants herein as above described exceeds in value the sum of two thousand (\$2,000) dollars, exclusive of interest and costs. That sections 5 and 6 of chapter 11 of the ordinances of Boise City provide as follows, to wit:

Sec. 5. When real estate is sold for taxes the purchaser shall be substituted to and acquire all the right, title, interest, and claim of the tax debtor; and when

the estate is less than a leasehold for two years' unexpired term, the sale shall be absolute. In all other cases of sale of real estate the property shall be subject to redemption within six months after the sale on paying the purchaser the amount of his purchase, with eighteen per cent thereon in addition, together with the amount of any assessment or taxes which the purchaser may have paid thereon. Upon the sale the collector shall give the purchasers a certificate of sale containing: 1st. A particular description of the real estate sold; 2d. The price bid for each district, lot, or parcel; 3d. The whole price paid; 4th. When subject to redemption it shall be so stated.

Approved September 6th, 1875.

Sec. 6. On application of any party entitled to a deed of any real estate sold for taxes as aforesaid, after the expiration of the time of redemption, and on the presentation of the certificate of sale, hereinbefore mentioned, the mayor shall execute such deed as prescribed in the charter of said Boise City.

Approved September 6th, 1875.

XIII.

That in accordance with said sections 5 and 6 of said ordinances, the tax collector of said Boise City, Idaho, did, on the 21st day of June, 1899, issue give, and deliver to said Boise City, the purchaser at said tax sale, a certificate of sale in due and legal form for each and all the lots, pieces, and parcels of land of these complainants above described. The certificate of sale containing:

- 1st. A particular description of the real estate sold;
- 2d. The price bid for each district, lot, or parcel;
- 3d. The whole price paid; and
- 4th. When subject to redemption.

XIV.

That the claim of said defendant is without any right whatever, and that the said defendant has not any estate, right, title, or interest whatever in said land or premises or any part thereof. That by reason of the proceedings aforesaid a cloud has been cast upon the title of said property of the complainants and each and every part thereof; and by reason of the defendant's adverse claim the complainants are greatly embarrassed in the use and disposition of their said property, and that thereby the value is greatly depreciated.

XV.

That this action is brought to prevent a multiplicity of suits, and to prevent great and irreparable injury to the plaintiffs herein. That under and by virtue of the laws of this State the sale of said property, for the above taxes or assessments, did and will cause a cloud upon the title of the same.

That these plaintiffs have no speedy or adequate remedy at law. That the above taxes and assessments are void and illegal for the following reasons:

XVI.

That the pretended act of the legislature of the State of Idaho, approved March 12, 1897, entitled "An act to amend sections 3, 5, and 11 of an act incorporating the

city of Boise, approved January 11, 1866, being sections 130, 132 and 138 of the special and local laws of Idaho, was never in fact a law of this State.

That said act or pretended act was not read on three several days in each house of the legislature; and that the provision of section 15, article 3 of the constitution providing for a reading of every bill upon three several days in each house previous to its final passage was not complied with, nor was it dispensed with in either of the two houses of the said legislature when said bill was pending therein, by a vote of the ayes and nays of the members, or otherwise, of each or either of said houses wherein it was so pending.

That the several amendments made by either house to such bills were not read on three several days in each house or in either house as required by the constitution of the State of Idaho.

And section 15 or article three was not suspended during the enactment of said amendments, or either of them.

XVII.

That the only right or authority possessed by said defendant corporation to make improvements above referred to, or to tax or assess the costs of the same against these plaintiffs is, under and by virtue of the provisions of said act of the legislature and city ordinances above referred to, which said act is wholly void.

XVIII.

That no proceedings have ever been had, nor has there been any hearing of any kind, or opportunity to be heard,

or any adjudication of any kind whatever as to the benefits, if any, accruing or to accrue to the said lands above described, or to any of them by reason of the construction of said sewerage system.

XIX.

That said city charter and the said city ordinances above referred to, and the levy and assessments of the taxes above referred to, thereunder are void and illegal in this:

That they are in violation of the provisions of the 14th amendment to the constitution of the United States which declares: "Nor shall any State deprive any person of life, liberty, or property without due process of law"; and in violation of the 5th amendment of the constitution of the United States, which declares: "No person shall be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation"; and also in violation of that provision, section 13, article 1 of the constitution of the State of Idaho, which declares: "No person . . . shall be deprived of life, liberty, or property without due process of law, and constitutes a taking of private property for public use without just compensation being paid therefor."

XX.

That no part of said property hereinbefore described has been redeemed from said tax sale, as hereinbefore set forth; and said tax sale and the proceedings herein set forth constitute a cloud upon the title to said property.

XXI.

To the end, therefore, that the complainants may have the relief which they can only obtain in the court of equity, and the respondent may answer in the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by complainants, that by decree of this Court it be declared and adjudged that the respondent has no estate or interest whatever in or to said pieces or parcels of land, or the premises hereinbefore described, and that the title of each of the complainants herein is good and valid as to their said property herein described; and that said tax certificate hereinbefore described or any tax deed which may have been issued to said Boise City based upon said tax sale certificate be by decree of this Court canceled and held not to be a cloud upon the title of any of the property of these complainants herein described, and for such other relief as may to this Honorable Court seem meet and agreeable to equity.

May it please your Honors to grant unto these complainants a writ of subpoena directed to the said Boise City, commanding it, at a certain time and under a certain penalty therein to be limited, personally to appear before this Honorable Court and then and there full, true, correct, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide by such further order, direction, or decree therein as to this Honorable Court shall seem meet and agreeable to equity and good conscience.

ROBERT B. WILSON.

ALFRED A. FRASER,

Solicitor for and of Counsel for Complainants.

State of Idaho, }
 County of Ada. } ss.

Robert B. Wilson, being first duly sworn, deposes and says that he is one of the complainants in the above-entitled action; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters herein stated to be on information and belief, and as to those matters he believes it to be true.

ROBERT B. WILSON.

Subscribed and sworn to before me this 31st day of July, 1900.

[Seal]

WALTER S. WALKER,
 Notary Public.

[Endorsed]: No. 183. In the Circuit Court of the United States, District of Idaho, Central Division. Robert B. Wilson et al., Complainants, vs. Boise City, Defendant. Bill of Complaint. Filed August 2d, 1900. A. L. Richardson, Clerk. Alfred A. Fraser, Attorney for Complainants.

*In the Circuit Court of the United States for the Central
Division of the District of Idaho.*

IN EQUITY.

ROBERT B. WILSON, JOHN A.
O'FARRELL, and R. E. EMMER-
SON,

Complainants,

vs.

No. 183.

BOISE CITY, a Municipal Corporation
of the State of Idaho,

Defendant.

Subpoena ad Respondendum.

The President of the United States of America, to Boise
City, a Municipal Corporation of the State of Idaho,
Greeting:

You, and each of you, are hereby commanded that you
be and appear in said Circuit Court of the United States,
at the courtroom thereof, in Boise, in said District, on the
first Monday of September next, which will be the third
day of September, A. D., 1900, to answer the exigency of
a bill of complaint exhibited and filed against you in our
said court, wherein Robert B. Wilson, John A. O'Farrell
and R. E. Emmerson are complainant and you are de-
fendant, and further to do and receive what our said Cir-
cuit Court shall consider in this behalf and this you are
in no wise to omit under the pains and penalties of what
may befall thereon.

And this is to command you, the marshal of said district, or your deputy, to make due service of this our writ of subpoena and to have then and there the same.

Hereof fail not.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, and the seal of our said Circuit Court, affixed at Boise, in said district, this 3d day of August, in the year of our Lord one thousand nine hundred and , and of the Independence of the United States the one hundred and twenty-fifth.

[Seal]

A. L. RICHARDSON,
Clerk.

Memorandum pursuant of Equity Rule No. 12 of the Supreme Court of the United States.

The defendant is to enter his appearance in the above-entitled suit in the office of the clerk of said court on or before the day at which the above writ is returnable; otherwise the complainant's bill therein may be taken *pro confesso*.

I certify that I made service of the within subpoena ad respondendum upon J. H. Richards, mayor of said Boise City, by showing the original and leaving with him a copy of same, together with a certified copy of the complaint on the 3d day of August, 1900, at Boise, Idaho.

August 3, 1900.

Fees 4.00.

F. C. RAMSEY,
United States Marshal.

[Endorsed]: No. 183. In the Circuit Court of the United States for the Central Division of the District of Idaho. In Equity. Robert B. Wilson et al., vs. Boise City. Subpoena ad Respondendum. Returned and filed, August 6th, 1900. A. L. Richardson, Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, District of Idaho, Central Division.

ROBERT B. WILSON, A. A. O'FAR-
RELL, and R. E. EMMERSON;
Plaintiffs,
vs.

BOISE CITY, a Municipal Corporation
of the State of Idaho,
Defendant.

Appearance of Solicitor for Defendant.

To A. L. Richardson, Clerk of the Above-named Court:
You will please enter my appearance as solicitor and counsel for defendant, Boise City, in the above-entitled cause.

Dated September 1st, 1900.

(Signed) C. C. CAVANAH,
Solicitor and Counsel for Defendant, Boise City.

[Endorsed]: No. 183. United States Circuit Court, Central Division, District of Idaho. Robert B. Wilson et al., vs. Boise City. Appearance. Filed September 1, 1900. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, in and for the Ninth
Circuit, Central Division of the District of Idaho.*

ROBERT B. WILSON, JOHN A.
O'FARRELL, and R. E. EMMER-
SON,

Plaintiffs,

vs.

BOISE CITY, a Municipal Corporation
of the State of Idaho,

Defendant.

Demurrer of Boise City.

Demurrer of the defendant, Boise City, a municipal corporation of the State of Idaho, above named, to the bill of complaint of the above-named plaintiffs.

This defendant, Boise City, by protestation, not admitting, confessing, or acknowledging all or any of the matters and things in and by said plaintiff's bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, does demur to the said bill of complaint, and for cause of such demurrer shows:

I.

That the said complainants have not in and by their bill of complaint herein made or stated such a case as doth or ought to entitle them, or either of them, in a court of equity, to any such discovery or relief as in

thereby sought, and prayed for, from, or against this defendant, and it appears by the said complainants own showing that no grounds of equity are alleged or stated in said bill, and no facts set forth to entitle a court of equity to proceed and determine the suit or grant the relief prayed for.

II.

That it appears by the said bill of complaint that the same is exhibited by the said plaintiffs against this defendant, Boise City, for distinct matters and causes in several, as appears by said plaintiffs' own showing that they are not in any manner in common or jointly interested or concerned, and are different owners of distinct and separate pieces and parcels of real property, and that the said bill of complaint is multifarious.

III.

That it appears by the said bill of complaint that the same is exhibited by the said plaintiff, Robert B. Wilson, and the several other persons therein named as plaintiffs thereto, for several distinct matters and causes that have no relation to or dependence upon each other, and that there is a misjoinder of parties plaintiffs therein as it appears by said plaintiffs' own showing; that there is no community or joint interest between the said plaintiffs in regard to the matter in dispute, and that said plaintiffs are different owners of distinct and separate pieces and parcels of real property, and that they are joined simply for convenience in bringing suit.

IV.

That it appears by the said plaintiff's bill of complaint that this Court has no jurisdiction to hear and determine the matter stated in said bill of complaint, because said plaintiffs have failed to show by their said bill of complaint that the said city charter, ordinances, levy of assessments, or the subject matter of the action mentioned and referred to in said bill of complaint are in violation of the provisions of the 14th amendment of the constitution of the United States or the laws of the United States, or in violation of the provisions of section 13, article I of the constitution of the State of Idaho, but, on the other hand, it is shown by said bill of complaint of said plaintiffs that the said city charter and ordinances are not, and the said levy of said assessments are not, and were not, made and levied in violation of the said 14th amendment to the constitution of the United States or the law of the United States, or the provisions of section 13, article I of the constitution of the State of Idaho, as the same were made and levied according to the number of front foot of property of said plaintiffs abutting upon or contiguous to that portion of said sewer districts numbers two and three mentioned in said plaintiff's bill of complaint.

Wherefore, and for divers other good reasons of demurrer appearing in the said bill of complaint, this defendant doth demur thereto, and prays judgment of this Honorable Court whether it shall be compelled to make any answer to said bill of complaint, and humbly prays

to be hence dismissed with its reasonable costs in this behalf incurred.

C. C. CAVANAH,
Solicitor for Defendant.

I hereby certify that, in my opinion, the foregoing demurrer is well founded in law.

C. C. CAVANAH,
Solicitor and Counsel for Defendant, Boise City.

State of Idaho, }
County of Ada. } ss.

C. C. Cavanah, being first duly sworn, upon his oath deposes and says: That he is the solicitor for defendant, Boise City, and that the foregoing demurrer is not interposed for delay. That the reason he makes this affidavit instead of the defendant is that said defendant is a municipal corporation of the State of Idaho, and that J. H. Richards, mayor of said defendant, is not present at Boise City, Idaho, and that to affiant's best knowledge and belief the said J. H. Richards is not on this date and at the time of making this affidavit in Boise City, Ada County, Idaho. That affiant is the duly elected, qualified, and acting city attorney of said defendant, and therefore he makes this affidavit.

C. C. CAVANAH,

Subscribed and sworn to before me this 29th day of September, 1900.

A. L. RICHARDSON,
Clerk.

[Endorsed]: No. 138. In United States Circuit Court, Central Division, District of Idaho. Robert B. Wilson et al. vs. Boise City. Demurrer of Boise City. Filed September 29th, 1900. A. L. Richardson, Clerk. C. C. Cavanah, Solicitor for Defendant, Boise City.

In the Circuit Court of the United States for the District of Idaho.

ROBERT B. WILSON et al.,	}
Complainants,	
vs.	
BOISE CITY,	}
Defendant.	

Opinion on Demurrer.

Alfred A. Fraser, Attorney for Complainants.

C. C. Cavanah, Attorney for Defendant.

The complainants own city lots within Boise City, and within certain sewer districts established by defendant, in which it ordered that sewers be constructed along the alleys back of the said lots, and that the cost of construction be paid by the owners of the lots at a uniform sum for each lineal foot abutting upon the line of the sewer. The sewer has been constructed and is in use; the assessment for the payment of its cost has been made, and complainants having failed to pay, their property was sold, and this action is brought to restrain the execution of deeds for the property, in pursuance of such sale. To

the complaint the defendant interposes its demurrer, in the consideration of which the following questions occur:

(1) Of the joinder of all complainants in one action; (2) Whether the State statute in pursuance of which the defendant proceeded was constitutionally enacted; and (3) whether the mode of assessment pursued is in violation of the 14th amendment of the constitution of the United States.

(1) There is not a settled rule as to the joinder of parties in such cases. If they were so joined for the purpose of uniting different sums claimed, in order to bring the total within the jurisdictional amount, there can be no question that under the uniform ruling of the United States Court it could not be permitted, but the sum claimed by each complainant to be involved is beyond the jurisdictional limit. To require them to bring separate actions would have no effect whatever except to make additional costs and labor. There is a rule which permits the joinder of parties, even when their claims are separate and distinct as to amount and individual right, but which depend upon the same law, the same procedure, and practically the same testimony for their determination. While there is not a concurrence of authority to this effect, there is such that it may be deemed a safe rule to follow when no injury can result from it to either party, but costs and labor may be saved. In this case no objection to this joinder has been pointed out except the merely technical one, that it is not the practice. It is therefore concluded that the complainants may be joined.

(2) That the statute of the State under which the defendant proceeded was not constitutionally enacted does not seem to be a question for consideration by this court, for the reason, if for no other, that it does not involve a federal question, nor is diversity of citizenship alleged.

(3) Whether the mode of assessing the cost of the sewer comes within the provisions of the 14th amendment as depriving a person of his property "without due process of law" does involve, for discussion at least, a federal question. It may safely be asserted that prior to the decision of *Norwood vs. Baker*, 172 U. S. 269, by the great weight of authority, both State and Federal, the assessment in this case would be justified, and even by some subsequent State cases it could be sustained. It is, however, a loss of time to consider prior United States or subsequent State rulings which are contrary to that decision, for it must govern the action of this Court. It is therefore important to try to understand just what it holds, and as the dissenting members of the Court charge that it is contrary to former rulings of the Court, care must be taken not to confuse what the court now says with what it may have held. The case was concerning the taking of a piece of ground for a street of which the value was fixed at two thousand dollars and the same paid to the owner. This, however, was a mere form, for this exact sum, together with all the costs of condemnation proceedings opening the street, etc., were assessed against the owner as the cost of opening the street, a fact that is emphasized by the court in repeating it. It was claimed, and so held by the Court, that this was in

violation of said amendment. The Court says: "That due process of law prescribed by that amendment requires compensation to be made, or secured to the owner, where private property is taken by a State or, under its authority, for public use." In answering the question whether the public in taking property for public use can "charge upon the abutting property the sum paid for it, together with entire cost incurred in condemnation proceedings, irrespective of the question whether the property was benefited by the opening of the street," says that special assessment may be made upon abutting property to meet the expenses of opening public highways; that such assessments are allowed upon the theory that special burdens may be imposed for special or peculiar benefits accruing; that the legislature has a large discretion in defining the territory benefited by the improvements and which may be subjected to such special assessments, but that the legislature cannot lay it down as an absolute rule that property, whether benefited or not by the opening of the street, may be assessed by the front foot for a fixed sum representing the whole cost of improvement, and without any right in the property owner to show that the sum so fixed is in excess of the benefits received, and that such exaction of the cost in substantial excess of the special benefits accruing is a taking of property under the guise of taxation to the extent of such excess without compensation. The Court concluded that the assessment against the owner under a rule which excluded inquiry as to special benefits was, in so far as this assessment exceeded such special bene-

fits, a taking of private property for public use without compensation. As I understand the case, it holds that under the amendment private property cannot be taken for public use without compensation; that when the costs exacted against the property for public improvement exceeds the special benefits to the property of such improvement, it is a taking without compensation and in violation of the amendment; and also that the owner must have an opportunity to show, before a competent tribunal, the facts bearing upon these principles.

While there are a number of State decisions to the contrary, there are also other United States decisions of several Circuit Courts which follow this case. So far as observed none of them are concerning sewer improvements, but they seem to hold distinctly that any assessment made uniformly by lineal measurement without any consideration of the special benefit to each separate piece of property is obnoxious to the amendment in any case, and they so construe the *Norwood* case. I cannot say that that case so impresses me, when its facts are considered, and it would seem that there is reason left to apply a different rule to a case like this. In that case there was not only an actual taking of private property for public use and not only without any compensation, but costs for the taking were charged to the owner. Here, there is no taking of property, but a necessary improvement is put upon public land for the benefit and convenience of the owners of the abutting property, as well as for the health of the community. It was a necessary and unavoidable improvement; if we consider at

all the health and convenience of the people, its cost was assessed in the only equitable and just way that it can be.

How one lot can be benefited more than another by the building of a sewer is difficult to understand. In the sense that one may be more valuable than another it might be said that it is more benefited, but this is a doubtful way of estimating benefits.

The fact is apparent that a sewer is of like or the same use and benefit to each lot. It is true that a lot not improved or used for residence may not, for the present, receive the same benefit, but the lot as property has a like benefit, for the improvement is there and enhances its value, and makes it that much more valuable and salable for use as a residence or other occupation. Moreover, can it be allowed that an owner of city property, who does not choose to improve or use it, shall stand in the way of the improvement of his neighbors' property beyond him on the line of such improvement or can it be said that those who desire to use their property must pay not only the cost of its improvement, but also that of their neighbors who do not wish to improve their property, and thus get without cost the benefit of the improvement? While it seems to me that the reason and justice, in case of sewer improvement at least, is in favor of the rule followed by defendant in this case, I am inclined to the view that the other Courts have so construed the Norwood case as to include within its rule even the case of sewers and I am not inclined to put my judgment against theirs.

There is, however, another element in this case that contents me with the conclusion that I am constrained to reach. Complainants allege that "In the year 1895 sewers were built and construed by said city from 13th street to the east line of the said city along the alleys of each block respectively, running east and west between Washington street and Front street, and the whole cost of said sewerage is assessed upon the whole city of Boise City, and the bonds of said Boise City, issued therefor; that the complainants in this cause are obliged to pay their proportionate share of the taxes of said city for the construction of the last mentioned sewerage, and the whole of the costs of the sewerage in the sewer district" in which their property is situated. It may be a question whether the taking of property by due process of law does not involve an equality of taxation among those bearing it. It requires no discussion to reach the conclusion that these complainants in paying all the expense for the construction of the sewer to their property and their proportion with all the property owners of the city, for the original sewer system, are paying more than their just proportion of sewer taxes. In view, then, of the authorities the demurrer is overruled.

BEATTY,
Judge.

[Endorsed]: No. 183. United States Circuit Court, Central Division, District of Idaho. Robert B. Wilson et al. vs. Boise City. Opinion on demurrer. Filed March 12, 1901. A. L. Richardson, Clerk.

At a stated term of the Circuit Court of the United States for the Central Division of the District of Idaho, held at Boise, Idaho, on the 18th day of March, 1901. Present: Hon. JAS. H. BEATTY, Judge.

ROBERT B. WILSON et al. }
vs. } No. 183.
BOISE CITY. }

Order of Substitution.

On motion of A. A. Fraser, Esq., attorney for plaintiff, ordered that the names of Eveline O'Farrell, Teresa O'Farrell and Angeline O'Farrell be, and are hereby, substituted as parties plaintiff in lieu of John O'Farrell, deceased being the joint owners of the property of the said deceased plaintiff, John O'Farrell.

*In the Circuit Court of the United States, Ninth Judicial
Circuit, District of Idaho, Central Division.*

ROBERT B. WILSON, EVELINE
O'FARRELL, TERESA G. O'FAR-
RELL, ANGELINE O'FARRELL,
and R. E. EMMERSON,

Plaintiffs,

vs.

BOISE CITY, a Municipal Corporation
of the State of Idaho,

Defendant.

Answer.

To the Judges of the United States Circuit Court, for the
District of Idaho, Central Division:

The defendant, Boise City, a municipal corporation of
the State of Idaho now and at all times hereafter, saving
and reserving to itself all and all manner of benefit or
advantage of exception or otherwise, that can or may be
had or taken to the many errors, uncertainties, or imper-
fections in said bill contained, for answer thereto, or so
much thereof as this defendant is advised it is material
or necessary for it to make answer to, answering says:

I.

This defendant admits the allegations contained in
paragraph 1 and 2 of said bill.

II.

This defendant admits the allegations contained in paragraph 3 of said bill, but alleges further, in addition to said subdivision twenty-seven of section two of said act, referred to in said paragraph 3 the following provisions of said act:

Twenty-seventh.—To open and establish streets, avenues, lanes, and alleys and widen the same, and for that purpose to condemn property for the city use under such regulations as are or may be provided by law. To grade, pave, plank, macadamize, gravel, curb, or otherwise improve or repair or beautify the highways, streets, avenues, lanes, alleys, and sidewalks of the city; and to provide for the payment of the expenses thereof, to levy special assessments upon property that is contiguous to or abutting or fronting upon the highway, street, avenue, lane, alley or sidewalk to be graded, paved, planked, graveled, curbed, macadamized, or otherwise improved or beautified by said ordinances as in the opinion of the city council shall secure a just and equitable apportionment of said assessment among the lots or parcels of said contiguous, abutting or fronting property. Special assessments so levied shall constitute a lien upon the property assessed, and the payment thereof may be enforced as all payments of taxes on real estate are enforced in said city.

III.

This defendant admits the allegations contained in paragraphs 4, 5 and 6 of said bill.

IV.

This defendant admits that on the 4th day of November, 1898, at a meeting of the common council of Boise City, ordinance number 266 was passed by the said common council and approved by the mayor of said Boise City, which ordinance provides, in addition to the provisions of said ordinance pleaded in paragraph 7 of said bill, the following provision:

Whereas, after notice inviting proposals and bids for the laying and constructing of said sewers ordered by said ordinances numbers 249 and 250, had been duly published in the "Idaho Daily Statesman," proposals and bids were received by the said council, and a contract for said laying and constructing of said sewers was awarded to H. B. Eastman, his bid being the lowest and best; and,

Whereas, after the total cost and expense of said laying and constructing of said sewers had been estimated and determined, the common council, pursuant to the provisions of said ordinances number 249 and 250, caused notice of the intention of the common council to levy a local or special assessment upon and against all the property fronting or abutting upon or contiguous to that portion of sewer districts number one and two above described to be daily published, the said notice also specifying a time and place when and where the common council would meet to receive and hear and determine any and all objections or complaints against said assessment, or the levy thereof, any owner of any said property might have to make; and,

Whereas, said meeting was duly held pursuant to said notice, at eight o'clock P. M. on the 15th day of June, 1898, at the city hall, at which time all complaints and objections to said assessment and the levy thereof that were presented were heard, and after due consideration by the common council, determined to be insufficient and invalid, and were therefore overruled.

V.

This defendant denies that said ordinance number 266, pleaded in paragraph 7 of said bill, provides that the respective amounts of said assessment, chargeable against each lot, piece, or parcel of said property owned by said complainants are the amounts pleaded in said paragraph 7 of said bill, but allege that said ordinance number 266 provides the following amounts of said assessment chargeable against said complainant's property, which are the only amounts so assessed against said complainant's property by said ordinance or any other ordinance of said city for the payment of the costs of said sewer:

Lots 1 to 11, inclusive, block 104.....	\$365.29
Lots 1, 2, 7 and 8, block 96.....	\$125.96
Lots 5, 6, 10, 11 and 2, block 97.....	\$157.45
Lots 1 to 12, inclusive, block 99.....	\$377.89
Lots 1, 2, 3, 4 and north fraction of block 128....	\$239.33
Lots 11 and 12, block 100.....	\$ 62.98

VI.

This defendant denies that there are no means pointed out or provided for by which assessments can be made against the lots or blocks mentioned in the said bill of

complaint according to the benefits conferred on each, in the act of the legislature or the city charter or the ordinances thereunder, but alleges the fact to be that said act of the legislature and the city charter of Boise City and the ordinances thereunder have full and adequate provisions, by means of which assessments can be and are made according to benefits conferred on each lot or block as hereinbefore and hereafter set forth; that said mayor and common council of defendant did, prior to the making and levying of said sewer assessments, ascertain and determine the benefits conferred on each distinctive lot or block of the property situated in said sewer districts number two and three and found and decided that each lot or block of property situated in said sewer districts and the owners thereof would be benefited to the full amount of said assessment so levied against said property of said complainants and other property owners situated in said sewer districts; that each of said lots or blocks of property and the owners thereof within said sewer districts number two and three were and are benefited to the full amount of said assessments so levied as aforesaid, by reason of the construction of said sewer.

VII.

This defendant denies that said sewer assessment mentioned and referred to in paragraph eight of said bill is and was arbitrary, or has no reference whatever either to the value of the lots upon which the said assessment is made or the benefits conferred upon said lots or the damage, if any, resulting from the building of said

sewer, but alleges the fact to be that said sewer assessment was levied in a just and equitable manner and according to the benefits conferred upon said property against each lot and block of property situated in said sewer districts number two and three, and according to the benefits each owner of said property would receive by reason of the construction of said sewer.

VIII.

This defendant denies the allegations contained in paragraph 9 of said bill, but alleges the fact to be that in the years 1891-92 said defendant did construct a main sewer on Thirteenth street, in said Boise City, and in which said sewer of said sewer districts number two and three runs into and which carries away and out of said city the filth, refuses, and sewerage from the homes and property of said complainants and other property owners in said districts number two and three; that the cost of the construction of said main sewer on said Thirteenth street was defrayed by the issuance of city bonds of said Boise City.

IX.

This defendant admits the allegations contained in paragraphs 10 and 11 of said bill.

X.

This defendant admits that the property of each of the complainants described in said bill exceeds in value the sum of two thousand dollars, exclusive of interest and costs, but further alleges that said property of said complainants did, at the time of the levying of said assess-

ment and at the present time, exceed in value the following sums to wit:

Lots 1 to 11, inclusive, in block 104	\$6,000.00
Lots 1, 2, 7, and 8, in block 96, and improvements thereon	\$5,000.00
Lots 5, 6, 10, 11, 12, block 97, lots 1 to 12, inclusive, in block 97, and lots 11 and 12, in block 100, and the whole of the fractional block number 138, containing one acre	\$10,000.00

XI.

This defendant admits the allegations contained in paragraph 13 of said bill, and that sections five and six of chapter XI of the Ordinances of Boise City as pleaded in paragraph 12 of said bill.

XII.

This defendant denies the allegations contained in paragraphs 14 and 15 of said bill.

XIII.

This defendant has no information or belief sufficient to enable it to answer the allegations contained in paragraph 16 of said bill and it therefor denies the same.

XIV.

This defendant denies the allegations contained in paragraph 17 of said bill, but alleges further that the defendant was at the time of making said assessments, and now is, possessed with authority and right to build, lay, and construct sewers in said Boise City in the manner aforesaid, under and by virtue of the provisions of

section 2 of article XII of the constitution of the State of Idaho, which said section contains two provisions, that any county or incorporated city or town may make and enforce, within its limits, all such local, police, sanitary, and other regulations as are not in conflict with its charter or with the general laws; that under and by virtue of the provisions of subdivision seven of section 5 of the charter of said Boise City authority is also granted to the defendant to make regulations to prevent the introduction of contagious diseases in the city and to remove persons inflicted with said diseases therefrom to suitable hospitals, provided by the city for that purpose, and to secure the protection of persons and property therein, and to provide for the health, cleanliness, ornament, peace, and good order of the city; that the defendant now is, and was at the time of making said assessments, possessed with authority under and by virtue of the police power and regulations of said city to build and construct, in the manner aforesaid, sewers in said city wherever necessary for the protection of the health of the inhabitants of said city; that at the time of the construction of said sewer in said sewer districts number two and three it became and was necessary for the defendant to build said sewer, in order to protect the health of the citizens residing in said sewer districts two and three in said city.

XV.

This defendant denies the allegations contained in paragraph 18 of said bill, but alleges the fact to be that prior to the levying of said sewer assessment mentioned

in said bill proceedings were had by the mayor and common council of the defendant, in which a hearing and opportunity to be heard was given to said complainants, and each of them, and all property owners in said sewer districts number two and three, and an adjudication was had as to the benefits accruing to each lot or block of property situate within said sewer district number two and three, by reason of the construction of said sewer system. That due and legal notice of said proceedings and hearing was given to all of said complainants and all the property owners in said sewer districts number two and three, that the mayor and common council of the defendant would hold a meeting of said mayor and council, for the express purpose of receiving and hearing any and all objections that any of said property owners in said sewer districts number two and three might have or present; that said meeting was duly held and a hearing given to all of said property owners in said sewer district number two and three before said assessment was levied by said mayor and council, in the council chambers, at the city hall of said defendant; that none of said complainants appeared, nor filed any objections or reasons why said sewer assessment should not be levied against their property nor the laying and constructing of said sewer in said sewer districts; that prior to the construction of said sewer a petition, signed by more than a majority of the resident property owners in said sewer districts number two and three, was duly filed with said mayor and council of the defendant; that shortly after the filing of said petition, and before the

levying of said assessment, said mayor and council of the defendant did refer said petition to the city engineer of said city to investigate the sufficiency of said petition; that said city engineer duly reported to said mayor and council, in which report he stated that said petition contained more than a majority of the resident property owners in said sewer districts number two and three, and that said report of the said city engineer was duly accepted by said mayor and council.

XVI.

This defendant denies the allegations contained in paragraph 19 of said bill.

XVII.

This defendant admits that no part of said complainant's property described in said bill has been redeemed from said tax sale.

XVIII.

That as to whether said tax sale and the proceedings set forth in said bill constitute a cloud upon the title to said property of complainants this defendant has not sufficient information or belief to enable it to answer, and therefore denies the same.

XIX.

And further answering, this defendant alleges that said sewer districts number two and three and all of the property of said complainants described in said bill is situated within the central part of the residences of said city, and that the homes of said complainants are upon

said property, and that each of said complainants does now, and did at the time of the construction of said sewer, live on said property; that shortly after the construction of said sewers in said sewer districts number two and three said complainants, and each of them, did, voluntarily, and of their own free wills, accept said sewer, by connecting their homes to the same, and have ever since used and received the benefit of said sewer; that the only persons who use said sewer in said sewer districts number two and three are said complainants and other property owners, situated in said districts; that it became necessary, in the interest and protection of the health of the inhabitants residing in said sewer districts number two and three and the city at large, to construct said sewer in said districts number two and three; that by reason of the construction of the said sewer in said sewer districts number two and three said sewer is a benefit to said property of said complainants and to the complainants more than the amount assessed against said property for the payment of the same; that said sewer has enhanced the valuation of each lot and block of complainants.

XX.

And further answering, this defendant denies that the complainants, or either of them, was ever entitled to the relief, or any part thereof, as in said bill demanded; nor has complainants, or either of them, any right to any other answer to said bill or any part thereof, from this defendant than as above given; and this defendant prays the same advantage of defendant's aforesaid answer as

if it had pleaded or demurred to the said bill of complaint.

And this defendant denies all the said bill charges; that there is no other matter, cause, or thing in the said bill contained material or necessary for this defendant to make answer thereunto, or not herein and hereby well and sufficiently answered, traversed, awarded, or denied, is not true to the knowledge or belief of this defendant; and all of which matters and things this defendant is ready and willing to aver, maintain, and prove, as this Honorable Court may direct.

And this defendant humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf sustained.

BOISE CITY,

A Municipal Corporation of the State of Idaho.

By J. H. RICHARDS,

Mayor of the Defendant, Boise City.

C. C. CAVANAH,

Solicitor and of Council for Defendant, Boise City.

[Endorsed]: No. 183. United States Circuit Court, Central Division, District of Idaho. Robert B. Wilson et al. vs. Boise City. Answer. Filed March 26th, 1901. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, Central Division
of the District of Idaho.*

ROBT. B. WILSON, EVELINE O'FER-
RELL, TERESA O'FERRELL,
ANGELINE O'FERRELL, and R. E.
EMMERSON,

Plaintiffs,

vs.

BOISE CITY, a Municipal Corporation
of the State of Idaho,

Defendant.

Replication.

These replicants, Robt. B. Wilson, Eveline O'Ferrell, Teresa O'Ferrell, Angeline O'Ferrell, and R. E. Emmer-son, saving and reserving to themselves all and all man-ner of advantages of exception which may be had and taken to the manifold errors and uncertainties and in-sufficiencies of the answer of the defendant, Boise City, for replication thereunto saith that they do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be re-plied unto by these replicants; without that that any other matter or thing in said answer contained, material or effectual in law to be replied unto and not herein and

herebefore well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these replicants are ready to aver, maintain, and prove as this Honorable Court shall direct, and humbly prays as in and by his said bill they *hath* already prayed.

ALFRED A. FRASER,
Solicitor for Complainants.

[Endorsed]: No. 183. In the Circuit Court of the United States, Central Division, District of Idaho. Robert B. Wilson et al., Plaintiffs, vs. Boise City, Defendant. Replication. Filed April 6th, 1901. A. L. Richardson, Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, District of Idaho, Central Division.

ROBERT B. WILSON, EVELINE
O'FARRELL, TERESA G. O'FARRELL,
ANGELINE O'FARRELL,
and R. E. EMMERSON,

Plaintiffs,

vs.

BOISE CITY, a Municipal Corporation
of the State of Idaho.

Defendant.

Agreed Statement of Facts.

The above-named parties hereby agree upon the following statement of facts, in addition to the facts admitted

by the pleadings, and submit the same to the Court for determination of the points in controversy hereinafter specified:

The facts agreed upon are as follows:

I.

That on the 4th day of November, 1898, the common council and mayor of Boise City, Idaho, duly passed and approved the following ordinance, being the same pleaded in paragraph four of defendant's answer herein:

Assessments for Sewer District Nos. 2 and 3.

Sec. 26. Whereas, the common council, by ordinances numbered 249, approved March 29, 1898, and 250, approved March 29, 1898, did order that a sewer be laid and constructed in sewer district number two, which embraces all that part of said city lying between Hays and Franklin streets, commencing at the sewer main situate on Thirteenth street, running thence easterly to the east boundary line of said city, and also in sewer district number three, which embraces all that part of said city lying between Franklin and Washington streets, commencing at the sewer main situate on Thirteenth street in said city, running thence to the east boundary line of said city, in Boise City, Idaho; and,

Whereas, after notice inviting proposals and bids for the laying and constructing of said sewers ordered by said ordinances numbered 249 and 250, approved the 29th day of March, 1898, had been duly published in the "Idaho Daily Statesman," proposals and bids were received by said council, and a contract for said laying and

constructing of said sewers was awarded to H. B. Eastman, his bid being the lowest and best; and,

Whereas, pursuant to said award, a contract for said laying and constructing said sewers was made and executed on the 7th day of July, 1898, by and between Boise City and said H. B. Eastman, by the terms of which, said contract, the cost of said laying and constructing of said sewer was fixed at 94 $\frac{3}{4}$ cents per linear foot; and

Whereas, after the total cost and expense of such laying and constructing of said sewers had been estimated and determined, the common council, pursuant to the provisions of said ordinances numbered 249 and 250, approved the 29th day of March, 1898, caused notice of the intention of the common council to levy a local or special assessment upon and against all the property fronting or abutting upon or contiguous to that portion of sewer districts numbered two and three, above described, to be duly published, the said notice also specifying a time and place when and where the common council would meet to receive and hear and determine any and all objections or complaints against said assessments, or the levy thereof, any owner of any of said property might have to make; and,

Whereas, said meeting was duly held pursuant to said notice at 8 o'clock P. M. on the 15th day of June, 1898, at the city hall, at which meeting all complaints and objections to said assessments and levy thereof that were presented were heard, and after due consideration by the common council determined to be insufficient and invalid, and were therefore overruled.

Now, therefore, the mayor and common council of Boise City, Idaho, do ordain:

Cost of Laying Sewers, How Paid.

Sec. 27. That for the purpose of defraying the cost of laying and constructing sewers in sewer districts numbered two and three, as provided in ordinances numbered 249 and 250, approved March 29th, 1898, and in accordance with other ordinances of Boise City, relative to the laying and constructing of sewers from the sewer main, situate on Thirteenth street, and extending to the east boundary line of said city lying between Hays and Franklin streets in said city; also from the sewer main situate on Thirteenth street, and extending to the east boundary line of said city, lying between Franklin and Washington streets, in Boise City, Idaho, there is hereby levied upon and against all property fronting or abutting upon or contiguous to that portion of sewer districts numbered two and three above described, including intersections of streets, constructing manholes, flushing tanks, foot-vents, making connections with water supply for flushing, and defraying the expense of the city engineer in giving grades, etc., a local or special assessment of 62.82 cents per linear foot for each linear foot of property represented in said districts.

The respective amounts of said assessment chargeable against each lot, piece, or parcel of said property, being as follows, to wit, according to the official plat of Boise City, Idaho:

Sewer Assessment-Roll, Sewer District No. 2.

Description of property, amount assessment sewer, reputed owner.

Block 73, \$377.89, Eoff & Regan.

Lots 1 and 2, block 76, \$62.98, Mrs. H. William.

Lot 3, block 76, \$31.50, Wm. T. Sanders.

Lot 4, block 76, \$31.50, I. M. Moore.

Lots 5, 6, block 76, \$62.98, J. M. Haines.

Lots 7, 8, 9, block 76, \$94.47, Sherman G. King.

Lot 10, block 76, \$31.50, Wm. Stark.

Lots 11, 12, block 76, \$62.98, Isaac Bloch.

Lots 1, 2, 3, block 81, \$94.47, Mrs. J. H. Bush.

Lots 4, 5, 6, block 81, \$94.47, J. M. Johnson.

Lot 7, block 81, \$31.50, Mrs. Flora Simons.

Lot 8, block 81, \$31.50, S. H. Cox.

Lot 9, block 81, \$31.50, E. E. Myers.

W. 26 feet lot 10, block 81, \$16.37, Dr. Failchild.

E. 24 feet lots 11, 12, block 81, \$78.09, M. C. McCrum.

Lot 1, block 84, \$31.50, M. A. Regan.

Lot 2, block 84, \$31.50, Dr. Chas. Crane.

Lot 3, block 84, \$31.50, F. R. Brunsell.

Lots 4, 5, 6, block 84, \$94.47, Mrs. W. S. Paxton.

Lot 7, W. $\frac{1}{2}$ lot 8, block 84, \$47.23, Mrs. M. A. Puckett.

E. $\frac{1}{2}$ lot 8 and W. 12.5 feet, lot 9, block 84, \$23.62, Mrs.

Gussie Cohn.

E. $\frac{3}{4}$ lot 9, block 84, \$23.62, Fannie Stolz.

Lots 10, 11, 12, block 84, \$94.47, Mrs. M. A. Puckett.

Lot 1, block 89, \$31.50, Sam Harding.

Lots 2, 3, block 89, \$62.98, Jno. Suhlsen.

Lots 4, 5, 6, blocks 89, \$94.47, Mrs. Lucinda Turner.

Lots 7, 8, 9, block 89, Pat Gerrigan.

Lots 10, 11, 12, block 89, \$94.47, Fred Granholm.

Lots 1, 2, 7, 9, 10, 11, 12, block 92, \$251.93, Mrs. William Jauman.

Lot 3, block 92, \$31.50, J. R. Lusk.

Lot 4, block 92, \$31.50, Mrs. C. Nye.

Lots 5, 6, block 92, \$62.98, C. J. Ornsbee.

Lot 1, block 97, \$31.50, Thos. Finnigan.

Lot 2, block 97, \$31.50, Mrs. E. Miller.

Lots 3, 4, block 97, \$62.98, S. H. Hays.

Lots 5, 6, 10, 11, 12, block 97, \$157.45, J. A. O'Farrell.

Lots 7, 8, 9, block 97, \$94.47, Wm. Myers.

Lots 1 to 12, inclusive, block 99, \$377.89, J. A. O'Farrell.

Lots 1, 2, 3, 4, and N. fraction block 138, \$239.33, J. A. O'Farrell.

Sewer District No. 3.

Lots 1 to 12, inclusive, block 72, \$377.89, Jno. Lemp.

Lot 1, block 77, \$31.50, Mrs. F. A. Heron.

Lot 2, block 77, \$31.50, Frank Martin.

Lot 3, block 77, \$31.50, G. A. Brown.

Lot 4, block 77, \$31.50, M. Reynolds.

Lots 5, 6, block 77, \$62.98, Ed. Brannon.

Lots 7, 8, block 77, \$62.98, Jno. McMillan.

Lot 9, block 77, \$31.50, S. B. Coulter.

Lot 10, block 77, \$31.50, Geo. Lewis.

W. 36 feet lot 11, block 77, \$22.67, W. E. Pierce.

E. 14 feet lot 11 and lot 12, block 77, \$40.31, W. E. Borah.

Lots 1 to 12, inclusive, block 80, \$377.89, Wm. Wilson.

- Lots 1, 2, block 85, \$62.98, T. W. Randall.
Lot 3, block 85, \$31.50, Mrs. Irma Griffin.
Lot 4, block 85, \$31.50, Mrs. Jesse McDowell.
Lots 5, 6, block 85, \$62.98, Emily Hull.
Lots 7, 8, block 85, \$62.98, Pat Sheridan.
Lots 9 to 12 inclusive, block 85, \$125.96, Wm. Wilson.
Lot 1, block 88, \$31.50, Catholic Church.
Lot 2, block 88, \$31.50, Mrs. F. Dargel.
Lots 3, 4, block 88, \$62.98, Geo. Wise.
Lots 5, 6, block 88, \$62.98, J. W. Plummer.
Lots 7, 8, block 88, \$62.98, G. D. Golden.
Lot 9, block 88, \$31.50, Mrs. Julia Smith.
Lots 10, 11, 12, block 88, \$94.47, Addie Chapman.
Lots 1 to 12, inclusive, block 93, \$377.89, Mrs. M. Barnwell.
- Lots 1, 2, 7, 8, block 96, \$125.96, R. E. Emerson.
Lot 3, block 96, \$31.50, R. Adelman.
Lot 4, block 96, \$31.50, Mrs. E. H. Hesse.
Lot 5, block 96, \$31.50, Mrs. Rachel Peterson.
Lot 6, block 96, \$31.50, Theo. Buckle.
Lots 9, 10, block 96, \$62.96, W. F. Ryals.
Lots 11, 12, block 96, \$62.98, J. B. Broadbent.
Lots 1, 2, block 100, \$62.98, P. A. Quirk.
Lots 3, 4, block 100, \$62.98, D. Quimby.
Lots 5, 6, block 100, \$62.98, Mrs. Annie Ish.
Lots 7, 8, 9, block 100, \$94.47, Mrs. Jno. Green.
Lot 10, block 100, \$31.50, Mrs. E. Bayhouse.
Lots 11, 12, block 100, \$62.98, J. A. O'Farrell.
Lot 1 and W. $\frac{1}{2}$ lot 2, block 103, \$47.23, J. B. Morrow.
E. $\frac{1}{2}$ lot 2 and lot 3, block 103, \$47.23, R. F. Cook.

Lots 4, 5, 6, block 103, \$94.47, F. Fletcher.

Lots 7, 8, 9, block 103, \$94.47, E. W. Hall.

Lots 10, 11, 12, block 103, \$94.47, G. M. Parsons.

Lots 1 to 11, inclusive, block 104, \$365.29, R. Wilson.

Approved November 4, 1898.

Assessments, When Due.

Sec. 28. The assessment levied by section 27 of this chapter shall be due and payable by the owners of said property to the city tax collector on the 1st day of December, 1898, and if not paid by or before the 1st day of December, 1898, shall on said 1st day of December, 1898, be and become delinquent.

Approved November 4, 1898.

Penalty Added.

Sec. 29. A penalty of 15 per cent on all delinquent assessments must be added for delinquency, and must be collected when said delinquent assessments are collected, together with costs of collection.

Approved November 4, 1898.

Tax Collector to Make Delinquent List.

Sec. 30. Within ten days after said 1st day of December, 1898, the city tax collector shall make a list of all property on which said assessments are delinquent, showing the particular tracts and the names of the owners or reputed owners, and shall immediately cause said list to be published for ten days in Boise City. At the expiration of such publication all property on which said assessments are not then paid shall be sold by the

city tax collector at the city hall to satisfy said assessments and penalty and costs.

Notice of such sale shall be given for and during the time the delinquent list is published and in connection therewith. Such sale shall be conducted in the same manner, and shall have the same effect as sales of property for delinquent taxes, and the ordinances of Boise City relative to sales for delinquent taxes, so far as they may be applicable, shall govern the issuance of certificates of sale, the right of redemption, the issuance of deeds, and other matters connected with sales of property under this ordinance.

Approved November 4, 1898.

Assessments to be Paid in Lawful Money.

Sec. 31. The assessments levied as hereinbefore provided shall be paid in lawful money of the United States of America.

Approved November 4, 1898.

Fund Created in City Treasury.

Sec. 32. There is hereby created and established in the city treasury a fund to be known as the "Second and Third Districts Sewer Fund." All moneys collected on account of the assessments by this ordinance levied shall be paid into the city treasury to the credit of said fund, and shall be paid out only on warrants drawn against said fund in favor of contractors and others for work done in laying and constructing said sewer along that portion of sewer district above described. Such war-

rants shall draw interest at date of issuance at the rate of 8 per cent per annum until called for payment.

Approved November 4, 1898.

Assessments Declared to be a Lien.

Sec. 33. The assessments levied by this ordinance are hereby declared to be a lien against the property upon and against which they are levied from the passage and approval of this ordinance until assessments are wholly paid and satisfied.

Approved November 4, 1898.

That the respective amounts of said assessment chargeable against each lot, block, and parcel of complainant's property provided for in said ordinance number 266 are as follows:

Lots 1 to 11, inclusive, block 104.....	\$365.29
Lots 1, 2, 7, and 8 block 96.....	\$125.96
Lots 5, 6, 10, and 2, block 97.....	\$157.45
Lots 1 to 12, inclusive, block 99.....	\$377.89
Lots 1, 2, 3, 4, and fraction of block 128.....	\$239.33
Lots 11 and 12, block 100.....	\$ 62.98

II.

That the ex-Mayor Alexander, and nine persons who were members of the common council of Boise City during the year when said sewer assessment was levied, will testify to the following facts:

That prior to the time said sewer was constructed and the levying of said assessment for the purpose recited in said Ordinance Number 266, they did make, as such mayor and council, for the purpose of ascertaining the

necessity of and benefit said sewer would be to each description of property in said sewer districts number two and three, an examination of the extent and amount of benefit said sewer would be to each description of said property in said sewer districts number two and three, an examination of the extent and amount of benefit said sewer would be to each description of said property by going upon said property in said districts, and found and decided that it was necessary in the protection of the health of the citizens of said city and would be a benefit to each description of said property to the full amount of said assessment so levied against each of said properties by reason of the construction of said sewer. That said mayor and council did, prior to the levying of said assessment, order and cause to be given by publication in the "Idaho Daily Statesman," a newspaper published in said city, a notice to all of said property owners in said sewer districts number two and three, for a period of ten days, of the intention of said mayor and council to levy at a meeting of said mayor and council a special assessment against all property situated in said districts to pay the cost and expense of the construction of said sewer; that said notice was duly published in said newspaper once each day for ten days; that the following is a true copy of said notice:

NOTICE.

Notice is hereby given that the common council of Boise City, Idaho, has fixed June 15, 1898, at 8 o'clock P. M. in the city hall, as the time and place, to hear any

and all objections to the levying of a special assessment to defray the cost and expenses of laying and constructing a sewer in sewer districts numbers two and three in Boise City, Idaho.

DEAN PERKINS,
City Clerk.

That said meeting, as specified in the aforesaid notice, was duly held by said mayor and council, and at said meeting a hearing was granted to all property owners owning property in said districts two and three to file or present any reason or objections why said sewer should not be constructed; that none of said complainants either appeared, filed, or presented in any way any objection or reason why said sewer should not be constructed or said assessment be levied against their property at said meeting mentioned in the aforesaid notice; that said complainants R. E. Emerson, Eveline O'Farrell, Teresa O'Farrell, Angeline O'Farrell, and Robert Wilson all had knowledge of said meeting prior to the time the same was held, by conversation with M. Alexander, who was mayor at that time. That at said meeting and prior to the time said Ordinance Number 266 was passed reports from the city engineer and a special committee, which had been duly appointed by said mayor and council prior thereto to examine into the necessity of and the benefit said sewer would be to said properties in said districts two and three, were received and accepted by said mayor and council, and in said reports it was stated that after an examination was made

it was in the opinion of said city engineer and special committee that it was necessary in the protection of the health of all persons residing in said districts two and three and city, and that it would be a benefit to each description of property in said districts to construct said sewer; that at said meeting and before the passage of said Ordinance Number 266 the said mayor and council did discuss, consider fully, and determine the necessity of and the benefit said sewer would be to each description of property in said districts; that at the time said assessment was levied said mayor and council considered and determined that all of the property in said districts, and each of said lots, blocks, and parcels of said property, would receive a benefit greater than the amount of said assessment by reason of the construction of said sewer. That notice for proposals for bids was duly published in a daily newspaper in said city for a period of twelve days prior to the levy of said assessment, and proposals were received and opened by said mayor and council at a meeting, and that the bid of Eastman Brothers was accepted by said mayor and council as the same was the lowest and best.

III.

That Jerry Jones, Edward Phelps, and James Lusk, all competent plumbers in Boise City, any who have had considerable experience in constructing sewers in said city, will testify that the cost of the construction of said sewer at the amount stated in said Ordinance Number 266 was at the time of said levy and is a reasonable and

low cost, and that the same could not have been constructed at a lower cost unless at a loss to the person constructing the said sewer.

IV.

That said sewer districts two and three are situated in the thickly settled part of the residence of said Boise City, and that the homes where said complainants have been during the past ten years are upon their said properties against which said assessment was levied, excepting complainant Robert Wilson, who resides in another part of the city, but there are houses upon his said property occupied by his tenants. That prior to the construction of said sewer each of said complainants and other persons residing in said districts used privies and cesspools upon their said properties in said districts without sewerage facilities.

V.

That the city physician, Dr. George Collister, Dr. Sweet, Dr. McCalla, and Dr. Plummer, who are all reputable physicians practicing in Boise City, will testify that the maintenance of privies and cesspools in Boise City are injurious to the health of the citizens of said city, and does to a great extent cause sickness in said city; that the construction of said sewer in said districts two and three is a benefit and protection to the health of all persons residing in said districts and city; that in the third ward of said city, where there is no sewer system and where privies and cesspools are used entirely, there is more sickness than in any other part of

the city, which is caused to a great extent by reason of there being no sewer system in said ward.

VI.

That the valuation of the property of complainants described in said bill is as follows, to wit:

Lots 1 to 11, inclusive, block 104.....	\$6,000.00
Lots 1, 2, 7, and 8, block 96.....	\$5,000.00
Lots 5, 6, 10, 11, 12, block 97, and lots 1 and 12, inclusive, of block 97; and lots 11 and 12, block 100; and the whole of fractional block 138 containing one acre.....	\$10,000.00

That the aforesaid valuations includes improvements upon said properties. That by reason of the construction of said sewer in said districts two and three the values of said properties in said districts have been enhanced, and that the healthfulness of said districts have been increased.

VII.

That prior to the construction of said sewer in said districts two and three a petition asking said city to order the construction of the same was duly signed and filed with the mayor and council of said city by more than a majority of the resident property owners in said districts, and that said petition was duly accepted by said mayor and council.

VIII.

That all of the property owners except complainants in said districts two and three have paid to said city the amounts of said assessment so levied against their prop-

erty. That shortly after the completion of said sewer said complainants and all property owners in said districts did without any notice or demand on the part of said defendant connect their homes and houses occupied by their tenants and their said property to said sewer, and have each used ever since the time of so connecting therewith, and do at this time use said sewer; that said sewer in said districts two and three was constructed in a good and workmanlike manner, and that the same connects with the general sewer of said city, and is ample in capacity to meet all sewerage requirements of said districts; that the only property and persons who use said sewer are those situated in said districts. That the following ordinance is in force in Boise City:

Owners to Have Closets in Buildings.

Sec. 3. The owner or occupant of any building on the line of, or within one hundred and seventy feet of, any sewer main, any portion of which building is used for any purpose during any portion of the day, shall have at least one watercloset connected with the public sewer, or shall provide such watercloset within thirty days after notification from the city engineer or to the chief of police so to do, and shall have such waterclosets suitably arranged for use as a urinal, or provide a separate urinal connection with the sewers, and the owner or occupant of any such building in which food is cooked or clothing washed shall have a suitable sink, slopstone, or hopper for the reception of waste water, unless the watercloset

is the kind suitable for such use, in which case it can be so used.

Approved February 18, 1892.

Penalty.

Sec. 19. Every person who knowingly omits or refuses to comply with or willfully violates any of the provisions of this article, shall be fined for each offense in any sum not less than one nor more than fifty dollars, and costs of prosecution.

Approved February 18, 1892.

That the said statement of facts and the pleadings in this case contain all of the ordinances, actions, and steps taken by the mayor and council of Boise City when in constructing and ordering to be laid said sewer.

Dated at Boise City, Idaho, this 6th day of April, 1901.

ALFRED A. FRASER,
Solicitor for Complainants.
C. C. CAVANAH,
Solicitor for Defendant.

[Endorsed]: No. 183. United States Circuit Court, District of Idaho. Robert B. Wilson et al., vs. Boise City. Stipulation of Facts. Filed April 6th, 1901. A. L. Richardson, Clerk.

*In the Circuit Court of the United States for the District of
Idaho.*

ROBERT B. WILSON et al.,	}
Complainants,	
vs.	
BOISE CITY,	}
Defendant.	

Opinion.

A. A. Fraser, for Complainants.

C. C. Cavanah, for Defendant.

Upon submission of this cause by a stipulation of the facts, the questions presented upon and settled by the demurrer to the complaint were again argued and some additional authorities presented. While I have carefully examined them, it is unnecessary to now review or attempt to point out the particulars of their applicability or their inapplicability, for the one plain fact cannot be denied that the assessment was made by the lineal foot fronting the sewer line without particular consideration or hearing as to the special benefits resulting to the different property owners. The decided weight of the authority which I feel bound to follow holds this is in violation of the constitution of the United States as amended. While still doubting that such a case as this should be concluded by that of *Norwood vs. Baker*, 172 U. S. 269, yet in pursuance of what seems a general view of the Courts the judgment must be and is ordered in favor of complainants.

Perhaps reference should be made to the contention of defendant's counsel, that the amount of the assessment

in case of each complainant is not sufficient to give the Court jurisdiction. If this were the "matter in dispute," the case would long since have been promptly dismissed as not within the jurisdiction of the Court, but the "Matter in dispute" is the value of the complainant's property, which is alleged for each to be over the jurisdictional amount.

April 19, 1901.

BEATTY,
Judge.

[Endorsed]: No. 183. United States Circuit Court, Central Division, District of Idaho. Robert B. Wilson et al. vs. Boise City. Opinion. Filed April 19th, 1901. A. L. Richardson, Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, Central Division of the District of Idaho.

ROBERT B. WILSON, EVELINE
O'FERRELL, TERESA O'FER-
RELL, ANGELINE O'FERRELL,
and R. E. EMERSON,

Complainants,

vs.

BOISE CITY, a Municipal Corporation
of the State of Idaho,

Defendant.

Decree of the Court.

This cause coming on regularly to be heard before the Court on the 6th day of April, 1901, Alfred A. Fraser

appearing as counsel for the complainants and C. C. Cavanah appearing as counsel for the defendant, and the Court, after having heard the evidence and argument of respective counsel herein, and after duly considering the same: It is now, therefore, hereby ordered, adjudged, and decreed that the complainants have judgment as prayed for in their complaint herein against the said defendant; that all adverse claims of the defendant and all persons claiming or to claim said premises or any part thereof through or under said defendant are hereby adjudged and decreed to be invalid and groundless, and that the complainants be and are hereby declared and adjudged to be the true and lawful owners of the several lots, blocks, and tracts of land described in the complaint and hereinafter described, and every part and parcel thereof, and that their title thereto is adjudged to be quieted against all claims and demands or pretensions of the defendant.

Said premises are bounded and described as follows, to wit: That said Robert B. Wilson is the owner of lots numbered one to eleven, inclusive, in block No. 104, of the original townsite of Boise City, Idaho, and that his title to the same is hereby quieted as in this decree set forth; that R. E. Emmerson is the owner of lots numbered one, two, seven, and eight, in block No. 96, of the original townsite of Boise City, Idaho, and that his title to the same be quieted as in this decree set forth; that Eveline O'Ferrell, Teresa G. O'Ferrell, and Angeline O'Ferrell are the owners of lots numbered five, six, ten, eleven, and twelve, in block No. 97, and of lots numbered

one to twelve, inclusive, in block No. 99, and of lots numbered eleven and twelve, in block No. 100, and the whole of the fractional block No. 138, containing about one acre of ground; that the whole of said lots, blocks, and parcels of land are situate within the original town-site of Boise City, Idaho, in the county of Ada and State of Idaho.

And it is hereby adjudged and decreed that the tax certificates of sale issued on the 21st day of June, 1899, to the said defendant, Boise City, by Mrs. Carrie E. Myers, and city tax collector, against the property of each of these complainants as herein described are each of them void, and of no legal force or effect.

And the said defendant is hereby perpetually estopped from setting up any claims to the property of the complainants described herein, or any part thereof, by reason of said tax certificates of sale or any deed which said city may have acquired under and by virtue of said tax certificates of sale or the proceedings upon which said certificates of sale were based or issued.

And it is hereby further ordered, adjudged, and decreed that the complainants do have and recover their costs herein against the said defendant.

Dated April 19th, 1901.

JAS. H. BEATTY,
Judge.

[Endorsed]: No. 183. United States Circuit Court, Central Division, District of Idaho. Robt. B. Wilson et al. vs. Boise City. Decree. Filed April 19th, 1901. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, Ninth Judicial
Circuit, Central Division of the State of Idaho.*

ROBERT B. WILSON, EVELINE
O'FARRELL, TERESA O'FARRELL,
ANGELINE O'FARRELL and R. E.
EMERSON,

Complainants,

vs.

BOISE CITY, a Municipal Corporation
of the State of Idaho.

Defendant.

Petition for Allowance of Appeal and Assignment of Errors.

To the Honorable JAMES H. BEATTY, Presiding Judge
of the Circuit Court, aforesaid:

The above-named defendant, Boise City, a municipal corporation of the State of Idaho, named in the decree entered in this cause on the 19th day of April, 1901, deeming itself aggrieved by the decision and decree aforesaid in the above-entitled action, does attach hereto and make a part hereof its assignment of errors, and prays for the allowance of an appeal from said decree to the United States Circuit Court of Appeals, in and for the Ninth Judicial District of the United States, and that a transcript of the record and proceedings herein upon which said decree was rendered may be sent, duly authenticated to said Court of Appeals, and also that an

order be made fixing the amount of security which defendant shall give and furnish upon such appeal.

Assignment of Errors.

Comes now the petitioner above named, Boise City, a municipal corporation of the State of Idaho, and by its solicitor and counsel herein, and particularly specifies the following as the errors upon which said defendant will rely, and which it will urge upon its appeal in the above entitled cause:

First.—The Court erred in holding and deciding that the complaint herein does state facts sufficient to constitute a cause of action; and in overruling defendant's demurrer to said complaint for the following reasons, to wit:

(a) Because the Court had no jurisdiction to hear and determine the matters stated in said complaint.

(b) Because complaint is multifarious, as it appears therefrom that said complainants are not in any manner in common or jointly interested or concerned and are different owners of distinct and separate pieces and parcels of real property.

(c) Because there is a misjoinder of parties complainants, as it appears from said complaint that there is no community or joint interest between said complainants in regard to the matter in dispute, as complainants are different owners of distinct and separate pieces and parcels of real property.

(d) Because the city charter and said ordinances of the defendant, or the levy of said sewer assessment or

the subject matter of the action mentioned in said complaint, are not in violation of the provisions of the fourteenth amendment to the constitution of the United States or the laws of the United States, or section thirteen, article one, of the constitution of the State of Idaho.

(e) Because there are no grounds of equity stated or facts set forth in said complaint to entitle a court of equity to proceed and determine the suit or grant the relief prayed for.

Second.—The Court erred in adjudging and decreeing that all adverse claims of the defendant to the premises of said complainants or any part thereof described in the decree entered herein are invalid and groundless, and that the several lots, blocks, and tracts of said premises, and every part and parcel thereof, and the title of said complainants thereto, is adjudged to be quieted against all claims and demands of the defendant.

Third.—The Court erred in adjudging and decreeing that the tax certificate of sale issued on the 21st day of June, 1899, to the defendant by Mrs. Carrie E. Myers, as city tax collector, against the property of each of said complainants described in said decree entered April 19th, 1901, and each of said tax certificates are void and of no legal force or effect.

Fourth.—The Court erred in adjudging and decreeing that the complainants are entitled to an injunction, and decreeing that the defendant is perpetually estopped from setting up any claim to the said property of the complainants described in the decree herein, or any part thereof by reason of said tax certificates of sale or any

deed which said defendant may have acquired under and by virtue of said tax certificates of sale or the proceedings upon which said certificates of sale were based or issued.

Fifth.—The Court erred in deciding and adjudging that under the evidence in this case said sewer assessments were not levied according to the benefits conferred upon complainants property, by reason of the construction of said sewer in sewer districts numbers two and three of Boise City, and that said lots, blocks, and tracts of property against which said assessments were made were not benefited to the amount of each assessment.

Sixth.—The Court erred in deciding and adjudging that under the evidence in this case said sewer assessments were void and of no legal force or effect.

In order that the foregoing assignment of errors may be and appear of record, the appellant presents the same to the Court and prays that such disposition be made thereof as in accordance with law and the statutes of the United States in such cases made and provided.

All of which is respectfully submitted.

C. C. CAVANAUGH,
Solicitor for Defendant.

Now, on this 26th day of April, 1901, having considered the foregoing petition and assignment of errors, the same is allowed as prayed.

JAS. H. BEATTY,
Judge.

[Endorsed]: No. 183. United States Circuit Court, Central Division, District of Idaho. Robert B. Wilson et al. vs. Boise City. Petition for allowance of appeal and assignment of errors. Filed April 26th, 1901. A. L. Richardson, Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, Central Division of the District of Idaho.

ROBERT B. WILSON, EVELINE
O'FARRELL, TERESA O'FARRELL,
ANGELINE O'FARRELL and R. E.
EMERSON.

Complainants,

vs.

BOISE CITY, a Municipal Corporation
of the State of Idaho,

Defendant.

Allowance of Appeal.

The above-named defendant, Boise City, a municipal corporation of the State of Idaho, conceiving itself aggrieved by the judgment and decree entered in the above-entitled court on the 19th day of April, 1901, in the above-entitled proceedings, does hereby appeal from said judgment to the Court of Appeals of the United States for the Ninth Judicial Circuit, and prays that its appeal may be allowed, and that a transcript of the records and proceedings upon which said judgment was made, duly

authenticated, may be sent to the said Circuit Court of Appeals.

C. C. CAVANAH,
Solicitor for Defendant.

And now, to wit, on this 26th day of April, 1901, it is ordered that the said appeal be allowed as prayed for, and the bond on appeal is fixed at \$300.00.

JAS. H. BEATTY,
Judge.

[Endorsed]: No. 183. United States Circuit Court, Central Division, District of Idaho. Robert B. Wilson et al. vs. Boise City. Allowance of appeal. Filed April 26th, 1901. A. L. Richardson, Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, Central Division of the District of Idaho.

ROBERT B. WILSON, EVELINE
O'FARRELL, TERESA O'FARRELL,
ANGELINE O'FARRELL and R. E.
EMERSON,

Complainants,

vs.

BOISE CITY, a Municipal Corporation
of the State of Idaho,

Defendant.

Bond on Appeal.

Know all men by these presents, that we, Boise City, a municipal corporation of the State of Idaho, as princi-

pal, and the American Bonding & Trust Company of Baltimore City, Maryland, as surety, are held and firmly bound unto the above-named complainants, Robert B. Wilson, Eveline O'Farrell, Teresa O'Farrell, Angeline O'Farrell, and R. E. Emerson, in the sum of \$300.00, to be paid to the said complainants, Robert B. Wilson, Eveline O'Farrell, Teresa O'Farrell, Angeline O'Farrell, and R. E. Emerson, for the payment of which, well and truly to be made, we bind ourselves, and each of us, and each of our heirs, executors, administrators, and successors, jointly and severally by these presents.

Sealed with our seals and dated this 25th day of April, 1901, in the year of our Lord one thousand nine hundred and one.

Whereas, the above-named defendant, Boise City, a municipal corporation of the State of Idaho, has prosecuted an appeal in the above entitled suit and cause to the Circuit Court of Appeals of the United States, in and for the Ninth Judicial Circuit, to reverse the decree rendered in the above-entitled suit by the Judge of the Circuit Court of the United States for the District of Idaho, rendered and entered on April 19th, 1901:

Now, therefore, the condition of this obligation is such, that if the above-named Boise City, a municipal corporation of the State of Idaho, shall prosecute such appeal to effect and answer all damages and costs, if it fail to make such appeal good, then this obligation shall be

void; otherwise the same shall be and remain in full force and virtue.

BOISE CITY,

A Municipal Corporation of the State of Idaho.

By H. N. COFFIN,

President of the Council of Boise City, Idaho.

**THE AMERICAN BONDING AND TRUST COMPANY
OF BALTIMORE CITY, MARYLAND.**

By HORACE E. NEAL,

Vice-Prest.

Attest: CHARLES F. NEAL,

Asst. Secty.

Approved by:

[Seal]

JAS. H. BEATTY,

Judge.

[R. S.]

At a regular meeting of the board of directors of The American Bonding and Trust Company of Baltimore City, held at its office, Equitable Building, city of Baltimore, Maryland, on the eleventh day of July, 1899, the following resolution was unanimously adopted;

Whereas, The American Bonding and Trust Company of Baltimore City has been duly authorized by the proper authority of the State of Idaho to transact business therein, and has established an office for the transaction of such business at Boise, in the county of Ada in said State;

And whereas, it is necessary to the transaction of its business to have certain classes of bonds executed with promptness at places other than the office of the company at Baltimore, Maryland.

Therefore, it is resolved by the board of directors of The American Bonding and Trust Company of Baltimore City that from and after the passage of this resolution there be, and is hereby, constituted an advisory board in and for said State, consisting of Horace E. Neal, W. S. Bruce, Frank R. Coffin, George Spiegel, M. B. Zimmer and Charles F. Neal, who are hereby elected and constituted such advisory board of The American Bonding and Trust Company of Baltimore City, and the said Horace E. Neal and Frank R. Coffin are hereby constituted and appointed vice-presidents of said company for the State of Idaho; and Charles F. Neal is hereby constituted and appointed assistant-secretary of said company for the State of Idaho, and there is hereby vested in said Horace E. Neal and Frank R. Coffin as vice-presidents, and in each of them, full right, power, and authority to execute, sign, seal, and deliver, when attested by the signature of Charles F. Neal, as assistant secretary, in the name and on behalf of said company, any and all bonds, obligations, or undertakings required in judicial proceedings, in any and all courts in said State of Idaho and in the United States Circuit and District Courts in said State, and all bonds, obligations or undertakings so executed shall be as binding in effect as fully as if executed by the president and secretary of this company at its office in Baltimore, Md.

CERTIFICATE.

We, Ernest Noen, Jr., vice-president, and *Saluel H. Shriver*, secretary, of The American Bonding and Trust Company of Baltimore City, hereby certify that the foregoing is a true and correct copy taken from the records of the proceedings of the board of directors of The American Bonding and Trust Company of Baltimore City, and that it contains the whole of said original resolution.

In witness whereof we have hereunto subscribed our names and affixed the corporate seal of The American Bonding and Trust Company of Baltimore City, at Baltimore, Maryland, this eleventh day of January, 1901.

[Seal]

ERNEST HOEN,
Vice-President.

[R. S.]

State of Maryland, }
City of Baltimore. } ss.

On this eleventh day of January, A. D. 1901, before the subscriber, a notary public of the State of Maryland, in and for the city of Baltimore, duly commissioned and qualified, came Ernest Hoen, Jr., vice-president, and Samuel H. Shriver, secretary of The American Bonding and Trust Company of Baltimore City, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself, disposeth and saith that they are the said officers of the company

aforesaid, and that the seal affixed to the preceding instrument is the corporate seal of said company, and that the said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation.

In testimony whereof I have hereunto set my hand and affixed my official seal at the city of Baltimore, the day and year first above written.

[Seal]

HOWARD ABRAHAMSON,

Notary Public.

[Endorsed]: No. 183. United States Circuit Court, Central Division, District of Idaho. Robert B. Wilson et al. vs. Boise City. Bond on Appeal. Filed April 26th, 1901. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, Ninth Judicial
Circuit, Central Division of the District of Idaho.*

ROBERT B. WILSON, EVELINE
O'FARRELL, TERESA O'FARRELL,
ANGELINE O'FARRELL and R. E.
EMERSON,

Complainants,

vs.

BOISE CITY, a Municipal Corporation
of the State of Idaho,

Defendant.

Notice of Citation on Appeal.

To the Complainants Above Named, and to Alfred A.
Fraser, Their Solicitor:

You are hereby notified that Boise City, a municipal corporation of the State of Idaho, defendant, named in the decree entered in said court on the 19th day of April, 1901, has taken an appeal from said decree to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that a copy of the citation on such appeal, allowed and signed by the Judge of the above-entitled court April 26th, 1901, has lodged in the office of the clerk of said Circuit Court for you as by law required.

April 26th, 1901.

C. C. CAVANAH,
Solicitor for Defendant.

Service of a copy of the above notice admitted this 26th day of April, 1901.

ALFRED A. FRASER,
Solicitor for Complainants.

[Endorsed]: No. 183. United States Circuit Court, Central Division, District of Idaho. Robert B. Wilson et al. vs. Boise City. Notice of citation of appeal. Filed April 26th, 1901. A. L. Richardson, Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, Central Division of the District of Idaho.

ROBERT B. WILSON, EVELINE
O'FARRELL, TERESA O'FARRELL,
ANGELINE O'FARRELL. and R. E.
EMERSON,

Complainants,

vs.

BOISE CITY, a Municipal Corporation
of the State of Idaho.

Defendant.

Citation.

United States of America—ss.

The President of the United States, to Robert B. Wilson, Eveline O'Farrell, Teresa O'Farrell, Angeline O'Farrell, and R. E. Emerson, Greeting:

You are hereby cited and admonished to be and appear at a term of said Circuit Court of Appeals for the Ninth Judicial Circuit, to be holden at the city of San Fran-

cisco, in the State of California, on the 27th day of May, 1901, pursuant to an order allowing an appeal entered in the clerk's office of the Circuit Court of the United States, for the Central Division of the District of Idaho, from a decree, signed, filed and entered on the 19th day of April, 1901, in that certain suit No. 183, wherein Boise City, a municipal corporation of the State of Idaho, is respondent and appellant, and you are complainants and appellees, to show cause, if any there be, why the said decree and judgment rendered and entered in the above-entitled court and cause on the 19th day of April, 1901, should not be reversed and set aside, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable JAMES H. BEATTY, United States District Judge for the Central Division of the District of Idaho, this 26th day of April, 1901.

JAS. H. BEATTY,
Judge.

Service of the within citation and receipt of a copy thereof admitted this 26th day of April, 1901.

ALFRED A. FRASER,
Solicitor for Complainants and Appellees.

[Endorsed]: No. 183. United States Circuit Court, Central Division, District of Idaho. Robt. B. Wilson et al. vs. Boise City. Citation. Filed April 26, 1901. A. L. Richardson, Clerk.

Return to Citation.

And thereupon it is ordered by the Court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

Test:

[Seal]

A. L. RICHARDSON,

Clerk.

*In the Circuit Court of the United States for the Central
Division of the District of Idaho.*

ROBERT B. WILSON et al. }

vs. }

BOISE CITY. }

Clerk's Certificate to Transcript.

I, A. L. Richardson, Clerk of the Circuit Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages, numbered from 1 to 74, inclusive, to be a full, true, and correct copy of the pleadings and proceedings in the above-entitled cause, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the costs upon appeal in said cause, amounting to the sum of \$60.20, has been paid by the said appellant.

Witness my hand and the seal of said Court affixed at Boise, Idaho, this 2d day of May, A. D. 1901.

[Seal]

A. L. RICHARDSON,

Clerk.

[Ten Cent U. S. Int. Rev. Stamp. Canceled.]

[Endorsed]: No. 699. In the United States Circuit Court of Appeals for the Ninth Circuit. Boise City, a Municipal Corporation of the State of Idaho, Appellant, vs. Robert B. Wilson, Eveline O'Farrell, Teresa O'Farrell, Angeline O'Farrell, and R. E. Emerson, Appellees. Transcript of Record. Appeal from the Circuit Court of the United States for the Central Division of the District of Idaho.

Filed May 6, 1901.

F. D. MONCKTON,

Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, District of Idaho, Central Division.

ROBERT B. WILSON et al.,

Complainants,

vs.

BOISE CITY, A Municipal Corporation
of the State of Idaho,

Defendant.

Bill of Exceptions.

Be it remembered that on the 12th day of March, 1901, the demurrer to the complaint herein having been here-

tofore argued and submitted, and the Court, being now fully advised in the premises, ordered that said demurrer be, and the same is hereby, overruled. To which ruling the defendant, by its counsel, then and there excepted in due form of law, which exception is allowed by the Court.

Dated this 12th day of March, 1901.

(Signed) JAS. H. BEATTY,

Judge.

Service of a copy of the above order of Court accepted and admitted this 11th day of September, 1901.

ALFRED A. FRASER,

Attorney for Plaintiffs.

The United States of America, }
 District of Idaho. } ss.

I, A. L. Richardson, clerk of the United States Circuit Court for the District of Idaho, do hereby certify that the foregoing copy of bill of exceptions in cause No. 183, Robt. B. Wilson et al. vs. Boise City, has been by me compared with the original, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears on file at my office and in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court in said District this 22d day of August, 1901.

[Seal]

A. L. RICHARDSON,

Clerk.

[Endorsed]: No. 183. United States Circuit Court, District of Idaho. Robt. B. Wilson et al. vs. Boise City. Certified Copy of Bill of Exceptions. Filed Aug. 22d, 1901. A. L. Richardson, Clerk.

U. S. C. C. A. No. 699. Filed Oct. 16, 1901. F. D. Monckton, Clerk.